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COMMISSION ON HUMAN RIGHTS

Sub-Commission on Prevention of
Discrimination and Protection
of Minorities
Working Group on Indigenous Populations
Tenth session
20-31 July 1992
Item 4 of the provisional agenda

STANDARD-SETTING ACTIVITIES: EVOLUTION OF STANDARDS CONCERNING THE RIGHTS OF INDIGENOUS POPULATIONS

Note by the Secretary-General

Information received from non-governmental organizations

REPORT OF THE TRIBAL SUMMIT ON THE DRAFT DECLARATION ON THE RIGHTS OF INDIGENOUS PEOPLES, DENVER, 16-18 JUNE 1992

ORGANIZED BY THE INTERNATIONAL ORGANIZATION OF INDIGENOUS RESOURCE DEVELOPMENT

1. In response to the invitation by the Under-Secretary-General for Human Rights to comment on the draft United Nations declaration on the rights of indigenous peoples, the International Organization of Indigenous Resource Development (IOIRD) convened a meeting from 16 to 18 June 1992 at the headquarters of the Council of Energy Resource Tribes (CERT) in Denver, United States of America. The purpose of the meeting was to review the draft declaration and obtain the views of IOIRD members and other indigenous peoples regarding possible revisions and additions, and to prepare a report for submission to the Under-Secretary-General and the members of the Working Group on Indigenous Populations.

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2. The meeting was open to all indigenous peoples affiliated with IOIRD, as well as other national organizations of indigenous peoples in the United States and Canada. Representatives of the following indigenous nations and peoples attended the meeting and participated actively in the discussions: Ermineskin Nation, Samson Nation, Ute Indian Tribe, Pueblo of Acoma, Pueblo of Jemez, and Pueblo of Zia. The meeting was also attended by Chief Ted Moses, Ambassador of the Grand Council of the Crees of Quebec (an indigenous peoples' non-governmental organization in consultative status with the Economic and Social Council), and by officers and employees of the Council of Energy Resource Tribes, including Mr. Mervyn Tano, General Counsel. The meeting was sponsored by the Four Nations of Hobbema and CERT.

3. In order to facilitate the discussion, explain the historical background of the draft declaration and provide technical and legal expertise, IOIRD also arranged for the participation of Mr. Augusto Willemsen-Diaz, attorney-at-law and formerly the United Nations human rights officer-in-charge of all work concerning the indigenous peoples of the world; and Mr. Russel Barsh, legal scholar and representative at the United Nations of the Four Directions Council (an indigenous peoples' non-governmental organization in consultative status with the Economic and Social Council).

4. The revised version of the declaration contained in annex I of this report reflects the views and concerns of the participants at the Denver meeting. The revisions and amendments it contains represent an effort to make the draft declaration more responsive to the practical concerns of indigenous peoples themselves, based on the experiences of the participants in their capacities as tribal officers and employees. These proposed revisions have not yet been approved formally by all of the member nations and peoples of IOIRD, but have been circulated to them for review.

5. Participants discussed each paragraph of the draft declaration in detail, with their focus on evaluating its completeness, clarity and consistency with indigenous peoples' own conceptions and aspirations. Revised texts were prepared on the basis of participants' suggestions, and these texts were discussed and revised a second time before being consolidated into the document in annex I.

6. Participants identified a number of issues that they felt had not yet been addressed adequately by the draft declaration. In particular they emphasized:

(a) The priority which must be given to indigenous peoples' right to self-determination;

(b) The priority which must also be given to rights arising from treaties between indigenous peoples and States;

(c) The great importance indigenous peoples attach to protection of cultural property and to spiritual and religious rights;

(d) The need for a clear statement of the duties of States;

(e) The need for the establishment of specific mechanisms for the international implementation of indigenous rights.

The document contained in annex I contains a number of revisions and additions aimed at meeting these concerns, including three new draft paragraphs on the duties of States and international implementation.

7. Participants also noted a number of important issues that had not yet been addressed at all in the draft declaration, including, inter alia:

(a) Protecting the integrity of families and communities;

(b) The status of indigenous legal systems and jurisdiction;

(c) Labour rights and practices.

The participants urge the Working Group to address these omissions at its upcoming (tenth) session.

8. Participants also proposed a reordering of the text of the draft declaration, so as to group its paragraphs by themes and issues in a logical fashion and to reflect the priority which indigenous peoples themselves accord to the right to self-determination and treaties (annex II).

9. The participants expressed a desire to contribute to the earliest possible completion, adoption and proclamation of the draft declaration. At the same time, they agreed that the adoption of the declaration should be only the first formal step in the efforts of the United Nations in this field, leading to the development of additional instruments and mechanisms, and they proposed two additional preambular paragraphs to reflect this view (annex I).

10. The participants expressed the hope that this report would be circulated to the members of the Working Group, and be made freely available in the conference room during the Working Group's upcoming (tenth) session for the use of indigenous peoples as well as observers of Governments.

Annex 1

REVISED TEXT OF THE DRAFT DECLARATION ON THE
RIGHTS OF INDIGENOUS PEOPLES

Affirming that all indigenous peoples are free and equal in dignity and rights in accordance with international standards, while recognizing the right of all individuals and peoples to be different, to consider themselves different, and to be respected as such,

Considering that all peoples contribute to the diversity and richness of civilizations and cultures,

Convinced that all doctrines, policies and practices of racial, religious, ethnic or cultural superiority are scientifically false, legally invalid, morally condemnable and socially unjust,

Concerned that indigenous peoples have often been deprived of their human rights and fundamental freedoms, resulting in genocide, aggression, oppression, the dispossession of lands, territories and resources, as well as in poverty and marginalization,

Welcoming the fact that indigenous peoples are organizing themselves in order to bring an end to all forms of discrimination and oppression wherever they occur,

Recognizing that the inherent rights and characteristics of indigenous peoples are inseparable from their cultures, spiritual traditions, histories and philosophies, their political, economic and social structures, and especially their right to manage and protect their lands, territories and resources,

Reaffirming that indigenous peoples, in the exercise of their rights, should be free from adverse discrimination of any kind,

Recognizing that increasing their control over development which affects them or their lifestyles, lands, territories or resources will enable indigenous peoples to continue to strengthen their societies, cultures and tradition,

Emphasizing the need for the demilitarization and decolonization of the lands and territories of indigenous peoples, which will contribute to peace, understanding and friendly relations among all peoples of the world,

Emphasizing the importance of giving increased attention to the rights and needs of indigenous women, youth, children, elders, and disabled persons, including respect for the integrity of indigenous families and reproductive rights;

Recognizing in particular that it is in the best interest of indigenous children for their own families and communities to retain shared responsibility for their upbringing, which will assure their well-being and cultural and linguistic continuity in their development,

Believing that indigenous peoples have the right freely to determine their relationships with States in a spirit of coexistence,

Noting that the International Covenants on Human Rights affirm the fundamental importance of the right to self-determination, as well as the right of all human beings to pursue their cultural, spiritual and economic development in conditions of freedom and dignity,

Bearing in mind that the principles in this Declaration may not be used as a pretext for denying to any of the peoples of the world their right to self-determination,

Calling upon States to comply with and effectively implement all international instruments as they apply to indigenous peoples,

Believing that this Declaration is a first formal step in the recognition, promotion and protection of the rights of indigenous peoples, and the development of United Nations activities in this field,

Convinced also of the need for maintaining a United Nations body with special competence in this field, which should be at the highest level and involve the direct representation of indigenous peoples,

Solemnly proclaims the following Declaration of the Rights of Indigenous Peoples:

PART I

1. Indigenous peoples have the right to self-determination, in accordance with international law. By virtue of this right, they freely determine their relationships with States, in a spirit of coexistence, and freely pursue their cultural, spiritual, economic and social development in conditions of freedom and dignity.

2. Indigenous peoples have the right to the full and effective enjoyment of all of the human rights and fundamental freedoms which are recognized in the Charter of the United Nations and other international human rights instruments.

3. Indigenous peoples have the right to be free and equal to all other human beings and peoples in dignity and rights, and to be free from adverse discrimination of any kind based on their indigenous identity.

PART II

4. Indigenous peoples have the collective rights to exist and develop in peace and security as distinct peoples and to be protected against genocide, as well as the individual rights to life, physical and mental integrity, liberty, and security of person.

5. Indigenous peoples have the right to maintain and develop their distinct ethnic and cultural characteristics and identities, including the right to identify themselves as indigenous and to define their cultures.

6. Indigenous peoples have the collective and individual right to be protected from cultural genocide, including the prevention of, and redress for:

(a) any act which has the aim or effect of depriving them of their integrity as distinct societies, or of their ethnic or cultural characteristics or identities;

(b) any form of forced assimilation or integration;

(c) dispossession of their lands, territories or resources;

(d) imposition of other cultures or ways of life;

(e) disruption of their traditional forms of social organization or collective systems of land tenure;

(f) subjection to programmes of religious conversion; and

(g) any propaganda directed against them.

7. Indigenous peoples have the right to practise and revive their cultural traditions. This includes the rights to define, maintain, develop and protect the past, present and future manifestations of their cultures, such as archaeological and historical sites and structures, artifacts, designs, ceremonies,

visual and performing arts, and literature, as well as the right to the restitution and repatriation of cultural, religious, and spiritual property removed without their free and informed consent or in violation of their own laws.

8. Indigenous peoples have the right to manifest, practise, revive and teach their own spiritual and religious traditions, customs and ceremonies, in public or in private; the right to maintain, protect, and have access in privacy to religious and cultural sites; the right to the acquisition, use and control of ceremonial objects and resources; and the right to control the disposition or obtain the repatriation of human remains.

9. Indigenous peoples have the right to use, develop, promote, revive, and transmit to future generations their own languages, writing systems, and literatures, and to designate and maintain the original names of communities, places, and persons. States shall take measures to ensure that indigenous peoples can understand and be understood in political, legal and administrative proceedings, where necessary through the provision of interpretation and translation, or by other effective means.

10. Indigenous peoples have the right of access to all forms of education in their own languages, and the right to establish their own educational systems and institutions.

11. Indigenous peoples have the right to have the dignity and diversity of their cultures, histories, traditions and aspirations reflected in all forms of education and public information, with respect for their right to privacy. States shall take effective measures to eliminate prejudices and to foster tolerance, understanding and good relations.

12. Indigenous peoples have the right to the use of, and access to all forms of mass media in their own languages.

13. Indigenous peoples have the right to adequate financial and technical assistance to pursue freely their own economic, social and cultural development, and for the enjoyment of the rights contained in this Declaration.

--. Nothing in this Declaration may be interpreted as implying for any State, group or individual any right to engage in any activity or to perform any act contrary to the Charter of the United Nations or to the Declaration of Principles of International Law on Friendly Relations and Cooperation among States in Accordance with the Charter of the United Nations.

PART III

14. Indigenous peoples have the right to maintain their distinctive and profound relationship with their lands and territories. As used in this Declaration, the lands and territories of indigenous peoples means the total environment of the lands, waters, air, sea, sea-ice, flora and fauna, and other resources which they have traditionally owned, occupied, or used.

15. Indigenous peoples have the collective and individual right to own, control, and use their lands and territories. This includes the right to full recognition of their own laws, land-tenure systems and institutions for the management of their resources.

16. Indigenous peoples have the right to the restitution of any lands or territories which have been confiscated, occupied, used, or damaged without their free and informed consent. Other forms of reparation may be substituted only if freely agreed upon by the peoples concerned.

17. Indigenous peoples have the right to protect the environmental quality and productivity of their lands and territories, and the right to adequate support and assistance for this purpose from States and the international community. Unless otherwise freely agreed upon by the peoples concerned, neither military activities nor the storage, use, or disposal of hazardous materials shall take place within their lands or territories.

18. Indigenous peoples have the right to the continuing control of the use, development, and dissemination of their traditional sciences and technologies, such as cultigens, medicines, and ecological knowledge. This includes the right to regulate research conducted on their cultures or within their lands and territories.

18. Indigenous peoples have the right to maintain and develop their traditional social and economic systems and means of subsistence, and to engage freely in traditional economic activities including hunting, trapping, fresh- and salt-water fishing, herding, gathering, forestry and cultivation. In no case may any of the indigenous peoples of the world be deprived of its own means of subsistence.

19. Indigenous peoples have the right to the immediate, effective, and continuing improvement of their social and economic conditions. States shall take special measures to this end, which shall be planned and implemented with the participation and

consent of the indigenous peoples concerned, and reflect their own priorities.

20. Indigenous peoples have the right, in the exercise of their right to self-determination, freely to determine all social and economic measures affecting them, and, if they so choose, to plan and implement such measures through their own institutions.

21. Indigenous peoples have the right, to the extent they choose, to participate on an equal basis with other citizens, and without adverse discrimination, in the political, economic, social and cultural life of the State, while maintaining their own distinct political, social, economic and cultural character.

21. Indigenous peoples have the right to the full recognition of, and proper regard to their own laws, customs, and practices in the legal system and political institutions of the State.

22. Indigenous peoples have the right freely to participate in decision-making at all levels, through representatives selected by themselves by means of their own choosing. States shall obtain the free and informed consent of indigenous peoples to any measures that may affect them directly.

23+24. Indigenous peoples have the right to self-government or autonomy within the State, if they so desire, as one element of the exercise of their right to self-determination. This includes the right to determine their own membership, and the nature, structure, procedures and membership of their own autonomous institutions, as well as the right to establish autonomous institutions for the maintenance of public order and resolution of disputes.

25. Indigenous peoples have the right to determine the responsibilities of individuals to their own communities, and the consequences of the non-fulfillment of these responsibilities, in a manner not inconsistent with universally recognized human rights and fundamental freedoms. This includes the right to provide mechanisms for the interpretation, protection and enhancement of individual rights and freedoms.

26. Indigenous peoples have the right to maintain and develop contacts and cooperation with all peoples, regardless of frontiers. The existence of State boundaries dividing indigenous peoples shall not prevent them from exercising fully the rights contained in this Declaration.

27. Indigenous peoples have the right to the observance and enforcement of treaties and other agreements concluded, in the

exercise of the right to self-determination, by indigenous peoples and States. States have a duty to honour and implement such treaties and agreements according to their spirit and intent, pursuant to the principle of pacta sunt servanda. Upon the request of the indigenous peoples concerned, States shall submit any disputes that cannot otherwise be settled to independent and impartial international bodies competent in these matters.

28. Indigenous peoples have the right to have access to mutually-acceptable, prompt, independent and fair mechanisms for resolving any disputes with States, and for providing indigenous peoples with effective remedies for any infringement of their rights.

28 bis. States have a duty, in conjunction with indigenous peoples, to take prompt and effective measures to ensure the full enjoyment and exercise of their rights, including those contained in this Declaration, and all other human rights and fundamental freedoms.

29+30. Nothing in this Declaration shall be interpreted as diminishing any rights which any of the indigenous peoples of the world may now have, or come to have in the future.

--. States shall provide indigenous peoples with the resources necessary for the exercise of their rights, directly and through international cooperation, in proportion to the capacities of each State and to the relative needs of the indigenous peoples concerned.

--. The United Nations shall mobilize international technical and financial cooperation for the prompt and effective implementation of the provisions of this Declaration.

--. The United Nations shall monitor the implementation of this Declaration through a permanent body with special competence in this field, which shall be at the highest level, and provide for direct representation and participation by indigenous peoples.

Annex II

PROPOSED RE-ORDERING OF PARAGRAPHS

PREAMBLE			
PART I	1	(was) 1	self-determination
	2	27	treaties
	3	23+24	autonomy
	4	22	participation/consent
PART II	5	(was) 2	enjoyment of human rights
	6	3	equality/non-discrimination
	7	21	equal participation
PART III	8	4	right to life, genocide
	9	5	right to cultural identity
	10	6	ethnocide
	11	7	cultural rights
	12	8	religious rights
	13	9	linguistic rights
	14	10	education in languages
	15	11	education against racism
	16	12	mass media
PART IV	17	13	right to development
	18	18	traditional economies
	19	19	improvement of conditions
	20	20	control of programs
PART V	21	14	relationship to land
	22	15	rights to land
	23	16	land claims/reparation
	24	17	environmental protection
	25	18	science/technology
PART VI	26	28bis	prompt State measures
	27	--	adequate State resources
	28	--	international cooperation
	29	--	United Nations monitoring
	30	28	access to remedies
PART VII	31	25	individual responsibilities
	32	26	international contacts
	33	--	nothing contrary to Charter
	34	29+30	non-derogation